

	OAH 15-2400-19393-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF PUBLIC SAFETY

In the Matter of a Public Safety Death Benefit for Ryan M. Sorek	ORDER DENYING ATTORNEYS FEES
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On July 11, 2008, the Administrative Law Judge issued the Findings of Fact, Conclusions and Order in this matter. On July 30, 2008, the Applicants filed an Application for Attorneys Fees and Other Expenses, pursuant to Minn. Stat. § 15.472. On August 7, 2008, the Applicants filed a Supplemental Affidavit. On August 12, 2008, the Commissioner of Public Safety filed an Objection to the Application.

Bruce P. Grostephan, Attorney at Law, Peterson, Engberg & Peterson, appeared on behalf of Jennifer Sorek and Danika Sorek (Applicants).

Emerald Gratz, Assistant Attorney General, appeared on behalf of the Commissioner of Public Safety (Commissioner).

Based upon the files herein, and for the reasons set forth in that accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

It is hereby ordered that the Application for Attorneys Fees under the Minnesota Equal Access to Justice Act is DENIED. The Applicants are not eligible to receive an award of attorneys fees and expenses because they do not meet the definition of "parties" under Minn. Stat. § 15.471, subd. 6; and although the Applicants prevailed on the merits, they are not entitled to an award of fees or expenses because the Commissioner's position to the contrary was substantially justified.

Dated: August 26, 2008

s/Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

In this matter, the Applicants sought an award of a public safety officer death benefit, which is awarded to survivors when persons in certain public protection occupations are killed in the line of duty. Ryan M. Sorek died of lymphatic myocarditis shortly after he finished working a shift as a paramedic. The issue presented was whether Mr. Sorek was killed in the line of duty, as that term is defined in Minn. Stat. § 299A.41, subd. 3,¹ or whether Mr. Sorek died of natural causes. The Applicants demonstrated that Mr. Sorek had been killed in the line of duty and were awarded the public safety officer death benefit. They were the prevailing parties. As is apparent from a review of the Order issued on the merits of the claim, the case presented an unusual fact situation and required a close analysis of the applicable statute and case law.

On July 11, 2008, the Applicants filed their claim for an award of attorneys fees and expenses pursuant to Minn. Stat. § 15.472, the Minnesota Equal Access to Justice Act (MEAJA). Under limited circumstances, that statute allows prevailing parties to seek recovery of attorneys fees and expenses from the State. Applicants claim that as prevailing parties, they are entitled to such a recovery. As a mother and daughter, they claim that they meet the definition of eligible parties because they are an “association.” They allege that the purpose of their association is to maintain their family, following Mr. Sorek’s death, and to achieve appropriate economic standing and educational goals. And they allege that they are entitled to the award of attorneys fees and expenses because the State’s position in the litigation was not substantially justified.

The Commissioner opposes the Application, contending that the Applicants are individuals and not an association, and individuals are not eligible to receive an award of attorneys fees and expenses under the statute. In addition, the Commissioner asserts, that although he did not prevail on the merits of the claim, his position was substantially justified. Thus, he argues that the Applicants should not be awarded attorneys fees and expenses.

Not every prevailing party is eligible to recover attorneys fees and costs under the MEAJA. Under the MEAJA, the term “party” is defined more narrowly than the definition of a party in a contested case.² The definition of an eligible party includes owners or officers of certain unincorporated businesses, partnerships, corporations, associations, or organizations, but it does not include individuals.³ The Applicants characterize themselves as an “association” within the statutory definition. It is a creative argument to be sure, but such an interpretation would conflict with the exclusion of individuals from recovery under

¹ Unless otherwise noted, all Minnesota statutory references are to the 2006 edition.

² Compare Minn. Stat. § 15.471, subd. 6, with Minn. R. 1400.5100, subp. 7.

³ Minn. Stat. § 15.471, subd. 6. The statutory definition covers small businesses with not more than 500 employees or annual revenues of less than \$7 million.

the statute. The case law, as cited in the Commissioner's Memorandum, is clear that individuals are not eligible to prevail under the MEAJA.

Moreover, an otherwise eligible prevailing party may recover under the MEAJA only if the State's position was not "substantially justified." The term "substantially justified" is defined as follows: "the state's position had a reasonable basis in law and fact, based on the totality of the circumstances before and during the litigation or contested case proceeding."⁴ Although the Applicants prevailed, the Commissioner's position in this case was substantially justified. As the Administrative Law Judge pointed out in the Memorandum, this was a close case. The medical witnesses disagreed about the causal relationship between Mr. Sorek's employment as a paramedic and his death from lymphocytic myocarditis. In addition, the application of the facts to the law required a close reading of the case law. There was no clear precedent that dictated a particular result. Ultimately, the decision was grounded on the Administrative Law Judge's view that given the remedial purpose of the statute, the increased risk of exposure to enteroviruses faced by paramedics, and the increased physical and emotional stress and physical exertion that a paramedic would ordinarily encounter, it was appropriate to award the benefit to the Applicants. Although the Commissioner did not prevail, his position in this case had a reasonable basis in law and fact based on the totality of the circumstances. No award of attorneys fees or expenses is warranted.

B. J. H.

⁴ Minn. Stat. § 15.471, subd. 8.